



PATENT

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December 2, 2005
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number: 09/944,996
Filing Date: August 31, 2005
Applicant(s): Brian MARTIN
Entitled: STATE MACHINE FOR ACCESSING A STEALTH
FIREWALL
Examiner: L. Ha
Group Art Unit: 2134
Attorney Docket No.: RSW920010151US1 (7161-009U)

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant requests that a Panel Review of the rejections in the Final Office Action dated October 7, 2005, be performed in the above identified application.

REMARKS

CLAIM 1 IS REJECTED UNDER THE FIRST PARAGRAPH OF 35 U.S.C. § 112

The Examiner asserted that the phrase "when said state machine in said restricting state" constitutes new matter. The Examiner, however, has apparently overlooked the recitation in claim 1, as originally presented, of the phrases "transition across a plurality of internal states, from a restricting state to an access state" and "a code for causing said state machine to transition from said restricting state to said access state." Reference is also made to the first full paragraph on page 14 of Applicant's disclosure, which discusses an intermediate state and a final state, and a pre-specified port can be opened in the final state. Thus, adequate descriptive support for the claimed invention is found in Applicant's originally filed disclosure.

CLAIMS 1-9 AND 11-13 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY REID

On pages 8-9 of the Amendment filed June 13, 2005 (hereinafter Amendment), Applicant argued that the statement of the rejection fails to clearly identify many of the specific elements within Reid being relied upon in the rejection. In particular, Applicant already argued that the Examiner failed to specifically identify within Reid the disclosed elements corresponding to the following claimed features: (i) a state machine; (ii) a plurality of states; (iii) a restricting state; (iv) a plurality of request to access an internal network; and (v) an access state. However, despite these arguments, the failure of the Examiner to specifically identify within Reid all of the claimed limitations has not been cured in the Final Office Action.

A common theme throughout the Examiner's analysis is the failure, by the Examiner, to consider and/or identify the entire claimed limitation. Instead, the Examiner has repeatedly

asserted that the disclosure of a single element within Reid identically discloses a more complex limitation involving several elements. The continued disagreement between Applicant and the Examiner as to whether or not Reid discloses all of the claimed limitation is a direct result of the lack of specificity in the statement of the rejection and the Examiner's failure to consider the entire limitations being claimed.

On page 10 of the Amendment, Applicant argued that "a connection decision is made by Reid based upon a single incoming connection request, and not a plurality of requests, as recited in claim 1" (emphasis in original). The Examiner's additional comments on pages 3 and 4 of the Final Office Action do little to clarify the Examiner's analysis, but instead, only serve to further obfuscate the Examiner's rationale. Notwithstanding the lack of a coherent argument, the crux of the Examiner's argument appears to be that "[t]he claim language states plurality of requests where Reid reads on having many users/groups or packets requesting access."

This assertion by the Examiner ignores Applicant's arguments and the plain language of the claims. As recited in claim 1, "said plurality of requests collectively comprising a code for causing said state machine to transition from said restricting state to said access state which causes said packet filter to permit access to said internal network." The Examiner, however, has failed to establish where Reid teaches a plurality of requests collectively comprise a code, and there is no teaching within Reid that the plurality of users/groups sending a plurality of requests collectively comprise a code. Instead, as already argued above, "a connection decision is made by Reid based upon a single incoming connection request, and not a plurality of requests." Whereas Reid teaches a plurality of requests (each ensuing in a separate connection decision)

thereby creating a plurality of connections decisions, the claimed invention recites that a plurality of requests (collectively comprising a code) are needed to result in a single connection decision.

Claims 7-9 and 11-13

Regarding claims 7 and 11, on page 11 of the Amendment, Applicant argued that a "review of this cited passage does not reveal any teaching of a second request, which in addition to a first request, is used to transition the state machine into a final state passage." On page 4 of the Final Office Action that Examiner cited column 14, lines 43-47 and asserted that "[t]he second call is the final state transition." The Examiner appears to have pulled this interpretation out of thin air since the Examiner has **failed to put forth any analysis and/or explanation** as to why one having ordinary skill in the art would recognize that the "second call" described by Reid corresponds to the claimed "transitioning from an intermediate state in said state machine to a final state if said identified further access request satisfies transitioning criteria associated with said state machine for transitioning from an intermediate state to said final state." As noted earlier, the Examiner has improperly asserted that a single disclosed feature in Reid identically discloses a more complex limitation involving several features.

As to Applicant's specific arguments pertaining to claims 8 and 12, found on page 12 of the Amendment, and Applicant's specific arguments pertain to claims 9 and 13, found on page 13 of the Amendment, the Examiner neglected to respond to these arguments in the Final Office Action. Instead, the Examiner lumped in a response to these arguments with the response to the Applicant's arguments regarding claim 1.

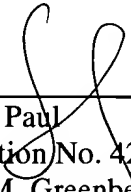
Claim 10

On page 15 of the Amendment, Applicant argued that "Rothermal discusses the use of hashed passwords and separately discusses the use of a time stamp, but Rothermal fails to teach or suggest using a combination of hashed password and timestamp." The Examiner responded on page 5 of the Final Office Action. Notwithstanding the Examiner's comments that "time stamp is one of the security information it is part of the security policy of the particular packet," a review of the Examiner's cited portions of Rothermal fails to yield a teaching of "said hashed password and timestamp matches said hashed result."

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,



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